

MT LEGISLATIVE HISTORY

Chapter 12 1979

Bill H (S) 33

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 24 ☒ C

Hearing Date(s) Jan 06 ☒ C

 C

Jan 10 ☒ C

 C

Jan 12 ☒ C

 C

 C

Date Out Jan 24 ☒ C

Jan 12 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee

Report

CHAPTER NO. 12

SENATE BILL NO. 33

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 5, 1979

Introduced and referred to
Committee on Judiciary.

On Motion Senator
Van Valkenburg was added
as author to the Pre-Filed Bill.

January 13, 1979

Committee recommend bill
do pass as amended.
Report adopted.

January 15, 1979

Printed and placed on
members' desks.

January 16, 1979

Second Reading, do pass.

January 17, 1979

Considered correctly
engrossed.

January 18, 1979

Third Reading, passed.
Transmitted to Second House.

IN THE HOUSE

January 19, 1979

Introduced and referred to
Committee on Judiciary.

January 25, 1979

Committee recommend bill
be concurred in. Placed
on Consent Calendar.

January 29, 1979

Third Reading, concurred in.

IN THE SENATE

January 31, 1979

Returned from Second House.
Sent to enrolling.

Reported correctly enrolled.

FORTY-SIXTH

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY - SENATE

<u>Senate & House</u> BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB - 1	1/3/79	1/5/79	1/5/79			1/5/79			
SB - 4	1/4/79	1/8/79	1/8/79			1/8/79			
SB - 25	1/4/79	1/8/79	1/8/79			1/8/79			
SB - 37	1/4/79	1/9/79	Tabled 2/2/79						
SB - 54	1/4/79	1/8/79	2/2/79			2/2/79			
SB - 65	1/4/79	1/22/79	2/6/79			2/1/79			
SB - 33	1/5/79	1/6/79	1/12/79			1/12/79			
SB - 41	1/5/79	1/6/79	1/11/79 1/6/79			1/11/79 1/6/79			
SB - 51	1/5/79	1/10/79	1/12/79		1/12/79				
SB - 56	1/5/79	1/10/79	1/12/79			1/12/79			
SB - 63	1/5/79	1/10/79	1/11/79	1/11/79					
SB - 67	1/5/79		Transferred 1/8/79						
SB - 77		Tabled	Tabled						
SB - 78	1/9/79	1/15/79	1/15/79			1/15/79			
SB - 41	1/9/79	1/11/79	1/11/79			1/11/79			
SB - 88	1/11/79	1/16/79	1/16/79			1/16/79			

SENATE BILL NO. 33

INTRODUCED BY _____

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO REMEDIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-107, MCA, is amended to read:

"27-1-107. Kinds of relief -- when given. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance, and--specific and preventive relief may be given in--no--other cases--than--those--specified--in--parts-2v-3v-and-4-of-this chapter--27-1-102v-27-1v-103v-28-1-104v-and-parts-16-and-17 of chapter-2-of-title-28 only when specifically provided for by statute."

Section 2. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, the slayer ~~he~~ must provide for the maintenance of the spouse ~~and minor children~~ of the person slain or permanently disabled ~~and--for the minor children~~ in such manner and at such cost, either by

aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, ~~to be as is~~ determined by the courts--if any person slays or disables another person in a--duel--in--this--state--the slayer ~~and he~~ is liable for and must pay all debts of the person slain or permanently disabled."

Section 3. Section 27-1-303, MCA, is amended to read:

"27-1-303. Limitation of damages for breach of obligation. Notwithstanding--the--provisions--of--27-1-204v-27-1-224v-27-1-223v--and--this--part--no ~~No~~ person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides except--in--the--cases--specified--in--27-1-221--through--27-1-223v--27-1-322v--78-16-100v--78-27-207v--and--78-27-208 unless a greater recovery is specifically permitted by statute."

Section 4. Section 27-1-311, MCA, is amended to read:

"27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, except where ~~when~~ otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment ~~which was~~ proximately caused thereby or which in the ordinary course of things would be likely to result therefrom. ~~No damages can be recovered for a breach of--contract~~ Damages which are not clearly ascertainable in

1 both their nature and origin ~~cannot be recovered for a~~
2 ~~breach of contract."~~

3 Section 5. Section 27-1-314, MCA, is amended to read:

4 "27-1-314. Breach of agreement to convey real
5 property. The detriment caused by the breach of an agreement
6 to convey an estate in real property is deemed ~~considered~~ to
7 be the price paid and the expenses properly incurred in
8 examining the title and preparing the necessary papers, with
9 interest thereon, ~~but adding thereto--in--case--of~~ if the
10 ~~breach was in bad faith and the agreed price was less than~~
11 ~~the value of the estate, the detriment is also considered to~~
12 ~~include the difference between the agreed price agreed-to-be~~
13 ~~paid and the value of the estate agreed-to--be--conveyed at~~
14 ~~the time of the breach and the expenses properly incurred in~~
15 ~~preparing to enter upon the land."~~

16 Section 6. Section 27-1-320, MCA, is amended to read:

17 "27-1-320. Conversion of personal property. (1) The
18 detriment caused by the wrongful conversion of personal
19 property is presumed to be:

20 (a) the value of the property at the time of its
21 conversion with the interest from that time or, where ~~when~~
22 the action has been prosecuted with reasonable diligence,
23 the highest market value of the property at any time between
24 the conversion and the verdict without interest, at the
25 option of the injured party; and

1 (b) a fair compensation for the time and money
2 properly expended in pursuit of the property.

3 (2) The presumption declared by subsection (1) ~~cannot~~
4 be repelled in favor of one whose possession was wrongful
5 from the beginning by his subsequent application of the
6 property to the benefit of the owner without his ~~such~~
7 ~~owner's~~ consent."

8 Section 7. Section 27-1-501, MCA, is amended to read:

9 "27-1-501. Survival of cause of action or defense --
10 death or other disability or transfer of interest. An
11 action, cause of action, or defense ~~shall~~ does not abate by
12 ~~because of the~~ death or other disability of a party or by
13 the transfer of any interest therein, but ~~shall--in--all~~
14 ~~cases--where--a~~ whenever the cause of action or defense arose
15 in favor of such party prior to his death or other
16 disability or transfer of interest therein, survive it
17 survives and may be maintained by his representatives or
18 successors in interest, ~~and--in--case--such~~ if the action has
19 not been begun or defense interposed, the action may be
20 begun or defense set-up interposed in the name of his
21 representatives or successors in interest, ~~and--in--case~~ if
22 the action has been begun or defense set-up interposed, the
23 ~~court--shall--on--motion--allow~~ the action or proceeding to
24 may be continued by ~~--or--against--his--representatives--or~~
25 ~~successors--in--interests--in--case--of--any--transfer--of--interests~~

1 the action or proceeding may be continued in the name of the
2 original party or the court may allow the person to whom the
3 transfer is made to be substituted in the action or
4 proceeding as provided in Rule 25, M.R.C.P."

5 Section 8. Section 27-1-606, MCA, is amended to read:
6 "27-1-606. Criminal penalty. Any person who shall
7 violate ~~violates~~ any of the provisions of this part shall be
8 guilty of a misdemeanor and is punishable upon conviction
9 therefor shall be punishable by a fine of not less than \$100
10 or more than \$1,000 or imprisonment for a term of not less
11 than 1 year or more than 5 years, in the discretion of the
12 court."

13 Section 9. Section 27-1-701, MCA, is amended to read:
14 "27-1-701. Liability for negligence as well as willful
15 acts. Every-one ~~Everyone~~ is responsible not only for the
16 results ~~results~~ of his willful acts but also for an injury
17 occasioned to another by his want of ordinary care or skill
18 in the management of his property or person except so far as
19 the latter has willfully or by want of ordinary care brought
20 the injury upon himself. The extent of liability in such
21 cases is defined by parts 2 and 3 of this chapter,
22 subsections (1) through (3) of 69-11-121, 70-16-108,
23 70-27-207, and 70-27-208."

24 Section 10. Section 27-1-811, MCA, is amended to read:
25 "27-1-811. When owner of radio station not liable for

1 material broadcast. No person, firm, or corporation owning
2 or operating a radio broadcasting station shall be ~~is~~ liable
3 under the law of ~~libel~~ and defamation on account of having
4 made its broadcasting facilities available to any person,
5 whether including but not limited to a candidate for public
6 office or any other person, for discussion of controversial
7 or any other subjects in the absence of proof of actual
8 malice on the part of such owner or operator."

9 Section 11. Section 27-1-813, MCA, is amended to read:
10 "27-1-813. Liability of person broadcasting --
11 liability of owner for broadcast prepared by station.
12 Nothing in 27-1-811 or 27-1-812 contained shall ~~may~~ be
13 construed to relieve any person broadcasting over a radio
14 station from liability under the law of ~~libel~~ and
15 defamations. Nor shall anything in 27-1-811 or 27-1-812 be
16 construed ~~or~~ to relieve any person, firm, or corporation
17 owning or operating a radio broadcasting station from
18 liability under the law of ~~libel~~ and defamation on account
19 of any broadcast prepared or made by any such person, firm,
20 or corporation or by any officer or employee thereof in the
21 course of his employment, and in any case where liability
22 shall exist whenever such an owner or operator is liable on
23 account of any a broadcast as declared in the first clause
24 of this sentence, in that event where and two or more
25 broadcasting stations were connected together simultaneously

or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of such the broadcast, such liability shall be confined and is limited solely to the person, firm, or corporation owning or operating the radio station which originated such the broadcast."

Section 12. Section 27-2-101, MCA, is amended to read:

"27-2-101. Definition of action. The word "action", as used in this chapter, ~~7-7-105(1), 7-32-412, 17-5-100, and 20-9-465~~ is to be construed, whenever it is necessary to do so ~~to do~~, as including a special proceeding of a civil nature."

Section 13. Section 27-2-102, MCA, is amended to read:

"27-2-102. When action commenced. ~~An for the purposes of statutes relating to the time within which an action must be commenced,~~ an action is commenced ~~within the meaning of [this chapter]~~ when the complaint is filed."

Section 14. Section 27-2-103, MCA, is amended to read:

"27-2-103. Actions by state subject to limitations. The limitations prescribed in ~~27-2-201 through 27-2-204, 27-2-207, 27-2-209 through 27-2-211, and 27-2-212 through 27-2-215~~ part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties."

Section 15. Section 27-2-105, MCA, is amended to read:

"27-2-105. Periods of limitation. The All civil actions must be commenced within the periods prescribed for the commencement of actions, other than for the recovery of real property, are as follows in part 2 except when another statute specifically provides a different limitation."

Section 16. Section 27-2-202, MCA, is amended to read:

"27-2-202. Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.

(2) The period prescribed for the commencement of an action upon a contract, account, or promise not founded on an instrument in writing is within 5 years.

(3) The period prescribed for the commencement of an action upon an obligation or liability, other than a contract, account, or promise, not founded upon an instrument in writing ~~other than a contract, account, or promise~~ is within 3 years."

Section 17. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions -- general and personal injury. (1) The period prescribed for the commencement of an action upon ~~an obligation or liability~~ not founded upon an instrument in writing ~~other than a contract, account, or promise~~ is within 5 years.

(2) The period prescribed for the commencement of an

1 action to recover damages for the death of one caused by the
2 wrongful act or neglect of another is within 3 years.

3 (3) The period prescribed for the commencement of an
4 action for libel, slander, assault, battery, false
5 imprisonment, or seduction is within 2 years."

6 Section 18. Section 27-2-211, MCA, is amended to read:

7 "27-2-211. Actions to enforce penalty or forfeiture or
8 other statutory liability. (1) Within 2 years is the period
9 prescribed for the commencement of an action upon:

10 (a) a statute for a penalty or forfeiture when the
11 action is given to an individual or to an individual and the
12 state, except when the statute imposing it prescribes a
13 different limitation;

14 (b) a statute or an undertaking in a criminal action
15 for a forfeiture or penalty to the state;

16 (c) a liability created by statute other than a
17 penalty or forfeiture.

18 (2) The period prescribed for the commencement of an
19 action by a municipal corporation for the violation of any
20 city or town ordinance is within 1 year.

21 (3) ~~{Sections--93-2421--to--93-2720}--do--not---effect~~
22 Notwithstanding any other provision of this chapter, actions
23 against directors or stockholders of a corporation to
24 recover a penalty or forfeiture imposed or to enforce a
25 liability created by law--but--such--actions must be brought

1 within 3 years after the discovery by the aggrieved party of
2 the facts upon which the penalty of forfeiture attached or
3 the liability was created."

4 Section 19. Section 27-2-213, MCA, is amended to read:

5 "27-2-213. Actions against banks. ~~To~~ (1) Except as
6 provided in subsection (4), there are no time limitations on
7 the commencement of actions brought to recover money or
8 other property deposited with any bank, banker, trust
9 company, or savings and loan corporation, association, or
10 society--there-are-no-limitations.

11 ~~(2) However--any~~ Any action to obtain, set aside, or
12 question in any manner any stated or settled account between
13 any bank, banker, trust company, or savings ~~or~~ and loan
14 corporation, association, or society and any depositor ~~or~~
15 depositors with such bank, banker, trust company, or savings
16 ~~or~~ and loan corporation, association, or society must be
17 commenced within 5 years from the date of the statement of
18 such account. Any action based upon or arising from the
19 payment of ~~by~~ any bank, banker, ~~trust~~ company, ~~or~~ savings
20 ~~and~~ loan corporation, association, or society of a forged,
21 raised, or otherwise altered check, order, or promissory
22 note out of the deposit, money, or property of the plaintiff
23 ~~shall~~ must be brought ~~commenced~~ within 3 years from the day
24 on which the plaintiff ~~or~~ his agent, assignee, or personal
25 representative ~~shall~~ have been ~~was~~ notified of such payment

1 or ~~on--which--he--or--they--shall--have~~ received such check,
2 order, or note marked "paid".

3 Section 20. Section 27-2-215, MCA, is amended to read:

4 "27-2-215. Other actions. An action for relief not
5 ~~hereinbefore otherwise~~ provided for must be commenced within
6 5 years after the cause of action ~~shall--have--accrued~~
7 ~~accrues."~~

8 Section 21. Section 27-2-303, MCA, is amended to read:

9 "27-2-303. Actions for waste, trespass, or injury
10 committed during mining work or exploration. When waste,
11 trespass, or injury is committed by reason of underground
12 work upon any mining claim or seismic exploration, location,
13 spacing, drilling, equipping, producing, or other operation
14 related to exploration or production of oil, gas, water,
15 geothermal ~~resources~~, or other minerals, the cause of action
16 ~~shall~~ ~~is~~ not be deemed ~~considered~~ to have accrued until the
17 discovery by the aggrieved party of the facts constituting
18 such waste, trespass, or injury."

19 Section 22. Section 27-2-304, MCA, is amended to read:

20 "27-2-304. Actions involving personal property
21 accruing after death and before issuance of letters of
22 administration. ~~for--the--purpose-of-computing-the~~ ~~the~~ time
23 within which an action must be commenced ~~in-a-court-of--this~~
24 state by an executor or administrator to recover personal
25 property taken after the death of a testator or intestate

1 and before the issuing of ~~letters-testamentary-or~~ letters of
2 administration or to recover damages for taking, detaining
3 or injuring personal property within the same period~~as the~~
4 ~~letters--are-deemed-to-have-been-issued-within-5-years-after~~
5 ~~the-death-of-the-testator-or-intestator~~ ~~shall be computed~~
6 ~~from:~~

7 ~~(1) the time of issuing such letters if they are~~
8 ~~issued within 5 years of the death;~~

9 ~~(2) 5 years after the death if the letters have not~~
10 ~~then been issued."~~

11 Section 23. Section 27-2-401, MCA, is amended to read:

12 "27-2-401. When person entitled to bring action is
13 under a disability. (1) If a person entitled to bring an
14 action mentioned in part 2, except 27-2-211(3), ~~be is~~, at
15 the time the cause of action accrued ~~accrues~~, either within
16 ~~the--age-of-majority a minor, insane seriously mentally ill,~~
17 or imprisoned on a criminal charge or ~~in-execution~~ under the
18 a sentence of ~~a-criminal-court~~ for a term less than for
19 life, the time of such disability is not a part of the time
20 limited ~~in-[93-2401-to-93-2720]~~ for commencing the action
21 ~~except-that, HOWEVER~~ the time so limited cannot be extended
22 more than 5 years by any such disability except ~~infancy~~
23 ~~minority~~ or, in any case, more than 1 year after the
24 disability ceases.

25 (2) Where ~~if~~ an action is barred by 27-2-304, any of

1 the next-of-kin heirs, legatees devisees, or creditors who
 2 at the time of the transaction upon which it the action
 3 might have been founded, within the age of majority
 4 insensory or imprisoned on criminal charge under one of the
 5 disabilities mentioned in Section 111 may, within 5 years
 6 after the cessation of such disability, maintain an action
 7 to recover damages by reason thereof in which, in such
 8 action he may recover such sum or the value of such property
 9 as he would have received on the final distribution of the
 10 estate if an action had been seasonably commenced by the
 11 executor or administrator.

12 (3) No person can avail himself of a disability
 13 unless it existed when his right of action or entry accrued.

14 (4) When two or more disabilities coexist at the time
 15 the right of action or entry accrues, the limitation does
 16 not attach until they are both removed."

17 Section 24. Section 27-2-404, MCA, is amended to read:

18 "27-2-404. When a party dies before action commenced.
 19 (1) If a person entitled to bring an action or against whom
 20 an action may be brought dies before the expiration of the
 21 time limited for the commencement thereof and the cause of
 22 action survives, an action may be commenced by or against
 23 his representatives after the expiration of that time and
 24 within 1 year from his death as provided in the Uniform
 25 Probate Code.

1 (2) If a person against whom an action may be brought
 2 dies before the expiration of the time limited for the
 3 commencement thereof and the cause of action survives, an
 4 action may be commenced against his representatives after
 5 the expiration of that time and within 1 year after the
 6 issuing of letters testamentary or of administration if a
 7 person against whom a cause of action exists dies without
 8 the state the time which elapses between his death and the
 9 expiration of 1 year after the issuing within the state of
 10 letters testamentary or letters of administration is not a
 11 part of the time limited for the commencement of an action
 12 therefor against his executor or administrators."

13 Section 25. Section 27-2-408, MCA, is amended to read:

14 "27-2-408. Effect on counterclaim of termination of
 15 action. Where whenever a defendant in an action has
 16 interposed an answer in support of which he would be
 17 entitled to rely at the trial upon a defense or counterclaim
 18 then existing in his favor the remedy upon which, at the
 19 time of the commencement of the action, was not barred by
 20 the provisions of [93-2401 to 93-2720] any provision of this
 21 code and the complaint is dismissed or the action is
 22 discontinued or abates in consequence because of the
 23 plaintiff's death, the time which intervened between the
 24 commencement and the termination of the action is not a part
 25 of the time limited for the commencement of an action by the

defendant to recover for the cause of action so interposed as a defense or to interpose the same defense in another action brought by the same plaintiff or a person deriving title from or under him."

Section 26. Section 27-2-409, MCA, is amended to read:

"27-2-409. Acknowledgment of debt or part payment. No acknowledgment or promise is sufficient evidence of a new or continuing contract by--which--to--take--the--case--out--of--the--operation--of--[93-2401--to--93-2720] sufficient to cause the relevant statute of limitations to begin running anew unless the same is contained in some writing signed by the party to be charged thereby. But ~~however~~ this section does not alter the effect of any payment of principal or interest, which payment is equivalent to a new promise in writing, duly signed, to pay the residue of the debt."

Section 27. Section 27-5-303, MCA, is amended to read:

"27-5-303. When award has effect of a judgment. After the expiration of 5 days from the filing of the award, upon the application of a party ~~and on filing who also files an~~ affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least 4 days prior to such application and that no order staying the entry of judgment has been served, ~~the clerk must enter the~~ award ~~must be entered by the clerk~~ in the judgment book and thereupon ~~it~~ has the effect of a judgment."

Section 28. Section 27-6-402, MCA, is amended to read:

"27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall each select three panelists within 30 days from the date of transmittal of the application.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select three persons from the health care provider's profession and, where applicable, to ~~from~~ persons specializing in the same field or discipline as the health care provider."

Section 29. Section 27-6-503, MCA, is amended to read:

"27-6-503. Conclusion of hearing -- supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the ~~attorney bringing the matter for review~~ claimant or his attorney consents in writing to a longer period.

(2) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present."

Section 30. Section 27-6-605, MCA, is amended to read:

"27-6-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel. ~~The~~ A copy of the report ~~decision~~ shall be sent to the health care provider's professional licensing board."

Section 31. Section 27-6-704, MCA, is amended to read:

"27-6-704. Panel proceedings and report ~~decision~~ privileged from disclosure in court actions. (1) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) No statement made by any person during a hearing before the panel may be used as impeaching evidence in court. The report ~~decision~~ of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law."

Section 32. Section 27-7-103, MCA, is amended to read:

"27-7-103. Entry of judgment -- costs. Judgment must be entered in the judgment book as in other cases but

without costs for any proceeding prior to the trial. ~~The case, the submission, and a copy of the judgment -- constitute the judgment rolls.~~"

Section 33. Section 27-8-204, MCA, is amended to read:

"27-8-204. Declarations concerning administration of trusts and estates. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, ~~legatee~~, heir, next-of-kin, or cestui que trust in the administration of a trust or of the estate of a decedent, ~~infant~~ ~~minor~~, ~~unette~~ ~~seriously~~ ~~mentally ill person~~, or insolvent may have a declaration of rights or legal relations in respect thereto:

(1) to ascertain any class of creditors, devisees, ~~legatees~~, heirs, next-of-kin, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings."

Section 34. Section 27-9-101, MCA, is amended to read:

"27-9-101. When and in what courts judgment may be confessed. ~~A~~ ~~Subject to 28-2-109,~~ a judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent

liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts. Judgment upon confession may be entered up in any justice's court specified in the confession as provided in this chapter."

Section 35. Section 27-9-103, MCA, is amended to read:

"27-9-103. Filing and costs -- district court. The statement must be filed with the clerk of the court in which the judgment is to be entered, who ~~must~~ shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with \$10 costs. ~~The statement and affidavit with the judgment endorsed thereon becomes the judgment roll.~~"

Section 36. Section 27-9-104, MCA, is amended to read:

"27-9-104. Filing and costs -- justice's court. In a justice's court ~~where the court which~~ has authority to enter the judgment, the statement may be filed with the justice, who ~~may~~ shall thereupon enter in his docket a judgment of his court for the amount confessed, with \$5 costs ~~in the district court and as in the justice's court~~. If a transcript of such judgment ~~be~~ is filed with the clerk of ~~the district court~~, a copy of the statement must be filed with it."

Section 37. Section 27-15-102, MCA, is amended to read:

"27-15-102. Availability of provisional remedies to defendant interposing counterclaim. ~~where whenever~~ the defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, his right to a provisional remedy is the same as ~~it would be~~ in an action brought by him against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment, ~~and for~~ ~~For~~ the purpose of applying to such a case the provisions of chapters 15 through 20 ~~(except part 10 of chapter 16, 27-17-102, 27-17-401, 27-18-111, and part 15 of chapter 18 of this title and chapter 8 of Title 25, chapter 8)~~ by the defendant is deemed ~~considered~~ the plaintiff, the plaintiff is deemed ~~considered~~ the defendant, and the counterclaim so set forth in the answer is deemed ~~considered~~ the complaint."

Section 38. Section 27-16-101, MCA, is amended to read:

"27-16-101. Exclusive procedure for ~~prejudgment~~ arrest in civil action. No person shall ~~may~~ be arrested ~~before judgment~~ in a civil action except as prescribed by this chapter."

Section 39. Section 27-16-102, MCA, is amended to read:

"27-16-102. When defendant may be arrested. The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud his creditors;

(2) ~~when the in an~~ action is for willful injury to person~~y~~ ~~to of~~ character~~y~~ or to property~~y~~ ~~knowing the~~ property ~~to belong which the defendant knew belonged~~ to another;

(3) in an action for a fine or penalty or for money or property fraudulently misapplied or converted to his own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or in a professional employment; or for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt~~y~~ ~~in of~~ incurring the obligation for which the action is brought, or in concealing or disposing of the property or for ~~the~~ taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors."

Section 40. Section 27-18-102, MCA, is amended to read:

"27-18-102. What property subject to attachment. (1) ~~The Except as provided in subsection (2), the~~ rights or shares which the defendant ~~may have has~~ in the stock of any corporation or company, together with the interest and profits thereon, all debts due such ~~the~~ defendant, and all other property in this state of such ~~the~~ defendant not exempt from execution may be attached and, if judgment be ~~is~~ recovered, sold to satisfy the judgment and execution. ~~Property exempt from execution is exempt from attachment.~~

(2) In any action where ~~in which~~ the amount sued for is \$10 or less, ~~no writ of attachment shall be issued and levied upon or against the wages or and earnings of the debtor or defendant for his personal services rendered at any time within 30 days next---preceding before the commencement of the action and in any such case or action such wages and earnings are exempt from attachment."~~

Section 41. Section 27-18-301, MCA, is amended to read:

"27-18-301. Form and content of writ -- defendant's undertaking to prevent levy. (1) The writ must be directed

to the sheriff of any county in which property of such defendant may be and must require him to:

(a) attach and safely keep all the property of such defendant within his county, not exempt from execution ~~attachment~~, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; ~~or~~

(b) unless if the defendant ~~give~~ gives him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, ~~in which case~~ to take such undertaking.

(2) Such ~~the~~ undertaking ~~is~~ to ~~must~~ be to the plaintiff ~~or~~ plaintiffs in the action and ~~shall~~ must be approved in writing on the back thereof by the plaintiff ~~or~~ plaintiffs or his ~~or~~ their attorney ~~or~~ attorneys or, upon their refusal, by the judge of the district court of the same county as the residence of the sheriff."

Section 42. Section 27-18-304, MCA, is amended to read:

"27-18-304. When sheriff may require written specification of property to be levied upon. No written specification of property to be levied upon ~~must~~ may be required by the sheriff, except as to property referred to

in 27-18-403 and 27-18-405(2)."

Section 43. Section 27-18-410, MCA, is amended to read:

"27-18-410. Corporate stock -- service on secretary of state. In addition to the method prescribed in 27-18-409 for attaching ~~stocks~~ stock or shares or interest therein of any corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent thereof does not live ~~or cannot be found~~ in Montana ~~or cannot be found within the said state~~ and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that ~~the above-named officers or managing~~ such officer ~~or~~ agent of ~~the said~~ corporation does not live or cannot be found ~~within the state in Montana~~, the clerk of the court shall make an order directing the writ to be served upon the secretary of state of Montana or, in his absence from his office, upon the deputy secretary of state. When such order has been made, the writ of attachment shall be served upon the secretary of state ~~or in his absence~~ upon the deputy secretary of state by leaving with him a copy of ~~said the~~ writ and a notice that the stock ~~or shares~~ or interest therein of ~~such~~ corporation ~~or company~~ belonging to the defendant is attached in pursuance of ~~such the~~ writ."

Section 44. Section 27-18-413, MCA, is amended to

1 read:

2 "27-18-413. Personal property subject to a security
3 interest. Personal property subject to a security interest
4 may be taken on attachment issued at the suit of a creditor
5 ~~(other than the secured party)~~ of the debtor under the
6 security agreement; but before the property is so taken, the
7 officer levying the writ must pay or tender to the secured
8 party the amount of the security agreement debt and interest
9 or must deposit the same with the county treasurer of the
10 county in which the financing statement covering the
11 security agreement is filed; if such statement is filed with
12 a county clerk and recorder or, if such statement is filed
13 with another filing officer pursuant to law, then with such
14 other filing officer, payable to the order of the secured
15 party."

16 Section 45. Section 27-18-1504, MCA, is amended to
17 read:

18 "27-18-1504. Form and content of writ -- defendant's
19 undertaking to prevent levy. (1) The writ may be directed to
20 the sheriff or any constable of the county or the sheriff of
21 any other county and must require him to:

22 (a) attach and safely keep all the property of the
23 defendant in his county, not exempt from execution
24 attachment, or so much thereof as may be sufficient to
25 satisfy the plaintiff's demand, the amount of which must be

1 stated in conformity with the complaint, or

2 (b) unless if the defendant has--given gives him
3 security by the undertaking of two sufficient sureties in an
4 amount sufficient to satisfy such demand, besides costs, in
5 which case to take such undertaking.

6 (2) Such the undertaking is--to must be to the
7 plaintiff or plaintiffs in the--action and shall must be
8 approved in writing on the back thereof by the plaintiff or
9 plaintiffs or his or their attorney or--attorneys or, upon
10 their refusal, by the justice issuing such the writ."

11 Section 46. Section 27-18-1506, MCA, is amended to
12 read:

13 "27-18-1506. Applicability of procedure in district
14 court. Part 1v--except--27-18-101; 27-18-207, 27-18-303v
15 27-18-304v-27-18-306 through 27-18-308; parts 4, 5, and 6v
16 except--27-18-406; 27-18-711 through 27-18-713, 27-18-721
17 through 27-18-732; and parts 8 and 9, except 27-18-901, are
18 applicable to attachments issued in justices' courts, the
19 word "constable" being substituted for the word "sheriff"
20 whenever the writ is directed to a constable, and the word
21 "justice" substituted for "judge."

22 Section 47. Section 27-19-204, MCA, is amended to
23 read:

24 "27-19-204. Issuance without bond. Said the injunction
25 provided for in 27-19-202 shall issue as in cases of equityv

without bond, upon the application of the county attorney of the county in which such ~~the~~ action is pending or upon the application of the attorney general in the name of the state of Montana, upon a prima facie showing that an action ~~civil or criminally described in 27-19-202~~ has been so instituted and is so pending ~~charging such person or persons corporation or corporations foreign or domestic with such violation.~~"

Section 48. Section 27-19-303, MCA, is amended to read:

"27-19-303. Time of granting injunction, evidence required. The injunction order may be granted at the time of issuing the summons upon the complaint or at any time afterward before judgment upon affidavits. In the one case, the complaint, with or without affidavits to support it, and, in the other, the affidavits shall ~~must~~ show satisfactorily that sufficient grounds exist ~~therefor for the order~~. An injunction order shall ~~may~~ not be granted on the complaint alone unless:

(1) it be ~~is~~ duly verified; and

(2) the material allegations of the complaint setting forth the grounds ~~therefor be for the order are~~ made positively and not upon information and belief."

Section 49. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) ~~On granting an injunction or restraining order, the court or judge may require, except~~ EXCEPT when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a party plaintiff, on granting an injunction or restraining order, the court or judge may require a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction if the court finally ~~decide~~ decides that the plaintiff was not entitled thereto.

(2) Within 5 days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If the ~~plaintiff~~ he fails to do so, ~~such plaintiff is deemed to have waived~~ he waives all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, ~~and upon failure if they fail~~ to justify or if others in their place fail to justify at the time and place appointed, the order granting an ~~the~~ injunction shall ~~must~~ be dissolved."

Section 50. Section 27-19-402, MCA, is amended to

1 read:

2 "27-19-402. Evidence upon ~~at~~ hearing. Upon ~~At~~ the
3 hearing ~~on the application~~ to vacate ~~dissolve~~ or modify an
4 injunction order, a verified answer has the effect only of
5 an affidavit. If the application ~~be is~~ made upon affidavits
6 on ~~the~~ part of ~~the~~ defendant, but not otherwise, the
7 plaintiff may oppose the same by oral testimony or
8 affidavits ~~or oral testimony~~ in addition to those on which
9 the injunction order was granted. The defendant may also use
10 oral testimony."

11 Section 51. Section 27-19-403, MCA, is amended to
12 read:

13 "27-19-403. New undertaking for security following
14 hearing. Upon the hearing of ~~an application to vacate or~~
15 ~~modify an injunction order~~, the court or judge may require a
16 new undertaking, in the same or a different sum, to be given
17 by the plaintiff, with like sureties and to the like effect
18 as the undertaking executed upon the granting of the
19 original order. The persons executing the new undertaking
20 become liable thereon as if they had executed it upon the
21 granting of the original order. The persons who executed
22 the original undertaking remain liable thereon until the new
23 undertaking is given and approved, and no longer."

24 Section 52. Section 27-19-404, MCA, is amended to
25 read:

1 "27-19-404. When injunction dissolved or modified. If
2 upon ~~such application the hearing~~ it satisfactorily appear
3 ~~appears~~ that there ~~is~~ ~~are~~ not sufficient ground grounds for
4 the injunction order, ~~it shall the order must~~ be dissolved;
5 or if it satisfactorily appear ~~appears~~ that the extent of
6 the injunction order is too great, ~~it shall the order must~~
7 be modified. ~~The court or judge may vacate the injunction~~
8 ~~order where the alleged wrong or injury is not irreparable~~
9 ~~and is capable of being adequately compensated for in~~
10 ~~money"~~

11 Section 53. Section 27-19-405, MCA, is amended to
12 read:

13 "27-19-405. Defendant's undertaking for security upon
14 dissolution. Upon ~~the hearing mentioned in 27-19-403~~ if the
15 injunction order is dissolved because the alleged injury is
16 not irreparable and is capable of being adequately
17 compensated for in money, the court or judge ~~may vacate the~~
18 ~~injunction order upon the defendant's executing shall~~
19 require the defendant to execute an undertaking in such form
20 and amount and with such sureties as the court or judge
21 ~~shall may~~ direct, conditioned to indemnify the plaintiff
22 against loss sustained by reason of ~~vacating such injunction~~
23 order the dissolution."

24 Section 54. Section 27-20-301, MCA, is amended to
25 read:

"27-20-301. Oath and undertaking to faithfully discharge duties. Before entering upon his duties, the receiver must be sworn to perform them faithfully and ~~shall execute an undertaking~~, with one or more sureties approved by the court or judge, ~~execute an undertaking~~ to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of the receiver in the action and obey the orders of the court therein. The court may at any time direct him to give new bonds with new sureties with the like effect. Such ~~undertaking may be sued on as provided in 2-9-505.~~"

Section 55. Section 27-25-103, MCA, is amended to read:

"27-25-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of ~~[93-2301---to--93-0717]~~ Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of ~~[93-2301-to 93-0717]~~ Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in ~~and this~~ chapter."

Section 56. Section 27-26-103, MCA, is amended to read:

"27-26-103. Application of rules of procedure. Except

as otherwise provided in this chapter, the provisions of ~~[93-2301-to--93-0717]~~ Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of ~~[93-2301-to 93-0717]~~ Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in ~~and this~~ chapter."

Section 57. Section 27-26-303, MCA, is amended to read:

"27-26-303. Jury trial. (1) If an answer ~~be~~ ~~is~~ made which raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court or judge may, in its or his discretion, order the question to be tried before a jury and postpone the argument until such ~~the~~ trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages which the applicant may have sustained, ~~in case they find if it finds~~ for him.

(2) If the proceeding is in the district court or before a district judge, the trial must take place as in other cases. If a jury ~~be~~ ~~is~~ required in the supreme court,

1 a jury must be drawn and selected from the jury boxes ~~box~~ of
 2 ~~the county in which the seat of government is located~~ Lewis
 3 ~~and Clark County~~ and the clerk of the district court of ~~said~~
 4 ~~that~~ county must ~~shall~~ place such--boxes ~~the box~~ in the
 5 custody of the clerk of the supreme court for that purpose.
 6 The conduct of the trial ~~shall must~~ be the same as in the
 7 district court, and the clerk of the supreme court ~~shall~~
 8 have ~~has~~ the same authority to issue process, and enter
 9 orders and judgments as the district ~~court~~ clerk has in like
 10 cases."

11 Section 58. Section 27-26-402, MCA, is amended to
 12 read:

13 "27-26-402. Judgment for applicant. If judgment be ~~is~~
 14 given for the applicant:

15 (1) he may recover the damages which he has sustained,
 16 as found by the jury or as ~~may be~~ determined by the court or
 17 referees, upon ~~if~~ a reference to-be ~~was~~ ordered, together
 18 with costs;

19 (2) ~~an execution may issue~~ for such damages and costs
 20 ~~on-execution-may-issue~~; and

21 (3) a peremptory mandate must be awarded without
 22 delay."

23 Section 59. Section 27-28-207, MCA, is amended to
 24 read:

25 "27-28-207. Procedure when action brought in supreme

1 court. Actions under this chapter commenced in the supreme
 2 court ~~shall must~~ be conducted in the same manner as if
 3 commenced in the district court, and the clerk of the
 4 supreme court ~~shall--have has~~ the same authority to issue
 5 summons and other process and to enter orders and judgments
 6 as the clerk of the district court has in like cases. All
 7 pleadings and the conduct of the trial ~~shall must~~ be the
 8 same as in the district court. If a jury is required to
 9 determine an issue of fact, a jury ~~shall must~~ be drawn and
 10 selected from the jury boxes ~~box~~ of ~~the county in which the~~
 11 ~~seat of government is located~~ Lewis and Clark County and the
 12 clerk of the district court of ~~said that~~ county must ~~shall~~
 13 place such ~~the~~ jury boxes ~~box~~ in the custody of the clerk of
 14 the supreme court for that purpose."

15 Section 60. Section 27-28-505, MCA, is amended to
 16 read:

17 "27-28-505. Powers and duties of trustees --
 18 liability. (1) The trustees shall forthwith ~~immediately~~
 19 demand all money, property, books--deeds--notes--bills
 20 obligations and papers of--every--description within the
 21 custody--power or control of the officers or the
 22 corporation--or either of them belonging to the corporation
 23 or in ~~anywise any way~~ necessary for the settlement of its
 24 affairs or for the discharge of its debts and liabilities;
 25 and they may sue for and recover the demands and property of

1 the corporation.

2 ~~(2) and--shall--be~~ The trustees are jointly and
3 severally liable to the creditors and stockholders ~~of the~~
4 ~~corporation~~ to the extent of its property and effects which
5 come into their hands."

6 Section 61. Section 27-31-102, MCA, is amended to
7 read:

8 "27-31-102. Petition for change of name of nonprofit
9 corporation. Any religious, benevolent, literary, or
10 scientific corporation or any corporation bearing or--having
11 ~~for--its--name~~ or using or being known by the name of any
12 benevolent or charitable order or society may, by petition
13 apply to the district court of the county in which its
14 articles of incorporation were originally filed or in which
15 the ~~its~~ property of--such--corporation is situated for a
16 change of its corporate name. Such petition must be signed
17 by a majority of the directors or trustees of the
18 corporation and must specify the date of the formation of
19 the corporation, the name proposed, and the reason for such
20 ~~the~~ change of name. Upon ~~the~~ filing such ~~of the~~ petition on
21 ~~behalf-of-such-corporation~~, the same proceedings ~~procedure~~
22 shall be ~~made followed~~ as upon applications for changes of
23 names of natural persons."

24 Section 62. Section 27-31-205, MCA, is amended to
25 read:

1 "27-31-205. Annual report of name changes by clerk to
2 secretary of state and legislative council -- publication.
3 Each January ~~the~~ clerk of the district court shall ~~annually~~
4 ~~in--the-month-of-January--make-a-return~~ report to the office
5 of secretary of state ~~of and the legislative council~~ all
6 changes of names made during the preceding year in the
7 district court of his county under this chapter. ~~Such--return~~
8 ~~shall the report must~~ show the date of the judgment ~~of--the~~
9 court, original name, name decreed, and residence. ~~Such~~
10 ~~returns--shall the reports must~~ be published in a tabular
11 form with the statutes first published thereafter."

12 Section 63. Repealer. Sections 64-210, 93-6501 through
13 93-6517, and 93-9011, S.C.M. 1947, are repealed. Sections
14 27-1-814 through 27-1-817, MCA, are repealed.

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 6, 1979

page 1

The second meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman on the above date in room 331 at 10:03 a.m. Chairman Lensink introduced the committee secretary, Alice Omang and Joan Mayer, Staff Attorney from the Legislative Council and attorney for this committee.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 41:

Senator Steve Brown explained the contents of this bill, which generally revises and clarifies the laws relating to the judiciary and courts. Senator Jean Turnage questioned the contents of section 24, page 12.

Joan Mayer from the Legislative Council offered an amendment that was missed in the bill. Senator Turnage moved to amend the bill as per the attached Standing Committee Report. The motion was seconded and carried unanimously.

CONSIDERATION OF SENATE BILL 33:

Senator Van Valkenburg gave a brief outline of the bill, which is an act to generally revise and clarify the laws relating to remedies. He introduced Joan Mayer from the Legislative Council who went over the bill section by section.

Senator Turnage questioned the words, "specified" and "specific". He felt there was a difference in meaning. He made a motion that on page 1, section 1, line 17 the word, "specifically" be stricken and the word, "specified" be inserted. The motion passed unanimously.

(Also motion carried in section 3 - word "specifically" - left up to Joan Mayer to word correctly.)

In Section 22, page 11, Senator Turnage felt that this was a substantial change. In section 24, he also felt that this was not a probate matter. Senator Turnage made an amendment to take Section 24 out of the bill in its entirety and renumber all other following sections. This motion passed unanimously.

Senator Turnage made a motion to amend on page 36, line 12 by striking "64-210" and motion carried unanimously.

Minutes of January 6, 1979

Page Two

2nd meeting

Senator Turnage then requested that the bill be kept in committee and considered later. His request was granted.

There being no further business, the meeting adjourned at 11:48 a.m.

Emmett R. Lensink

Senator Lensink, Chairman Judiciary
Committee

Jim Beck gave an explanation of exactly what this bill would do. He explained how if either side were dissatisfied with the decision of the commissioners after a hearing, they have 30 days in which to appeal to district court. He explained that the report of the commissioners cannot go into district court. This bill would allow the Department of Highways to waive the commission hearing. He explained how expensive the commission hearing can be in that the commissioners each get \$200.00 a day, and experts have to be brought in and they are paid \$150.00 a day. He stated that no one ever seems to be satisfied with the commission verdict so a great amount of them are appealed.

Senator Turnage questioned the wording, "waived by both parties" and made a motion to amend the bill on page 1, line 20 by inserting the word "written" following the word "by". The motion carried unanimously.

There were no further proponents and no opponents. Senator Van Valkenburg requested twenty-four hours to look into the matter further. The hearing on this bill was closed.

DISPOSITION OF SENATE BILL 33:

Senator Turnage stated that it was voted to delete Section 24 in its entirety. In that way, the old law stays the same. He then moved that the bill do pass as amended. The motion carried with all voting "yes" but Senator Towe abstaining.

CONSIDERATION OF SENATE BILL 27:

Senator Lensink stated that the Code Commissioners recommended that this bill be tabled as they felt that this bill was too controversial. Senator Turnage so moved and the motion carried by all voting yes with the exception of Senator Brown who voted no.

There being no further business, the meeting adjourned.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Juciciary Committee

SENATE COMMITTEE JUDICIARYDate 1/10/79 Senate Bill No. 33 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	✓	
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)		<i>Abstained</i>
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	

Patricia Conway
Secretary_____
ChairmanMotion: Do pass, as amended.

(include enough information on motion--put with yellow copy of committee report.)

Date 1/11/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)			
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 12, 1979

The seventh meeting of the Judiciary Committee was called to order by Everett R. Lensink, Chairman, on January 12, in room 331 at 10:02 a.m.

ROLL CALL:

All members of the committee were present with the exception of Senator Thomas E. Towe, who was excused.

DISPOSITION OF SENATE BILL 51:

Senator Turnage moved that this bill do not pass. The motion carried unanimously.

RECONSIDERATION OF
SENATE BILL 56:

Senator Van Valkenburg questioned page 4, section 2 of the bill, wherein the proposed amendment stated that the final report should be made in less than 30 days prior to trial. He introduced into the meeting a letter from Dexter L. Delaney, attorney at law from Missoula. (See letter attached.)

Senator Brown requested that we defer action on this bill until tomorrow or Monday so that Jim Beck from the Highway Department could get together with Attorney Delaney and maybe they could come to terms on this question. Senator Lensink requested Senator Brown to get in touch with Jim Beck and we would take this bill under consideration again on Monday. (See later on in these minutes - Senate Bill 56 was reconsidered.)

DISPOSITION OF SENATE BILL 33:

Senator Turnage moved that we reconsider action on Senate Bill 33. The motion passed unanimously.

Joan Mayer from the Legislative Council proposed an additional amendment on page 36, line 2 and line 5 by striking "secretary of state and". Senator Brown moved that we adopt the amendment and the motion passed unanimously.

Senator Val Valkenburg moved that this bill do pass as so amended. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 37:

Senator Anderson asked if we could have copies of the repealers photostated so the committee could have them in front of them. Joan Mayer stated that it would require an awful lot of copies. Senator Turnage said that they probably need a couple hours to go over this bill and recommended that

STANDING COMMITTEE REPORT

January 12,

19 79

President:

MR.

Judiciary

We, your committee on

Senate

having had under consideration

Bill No. 33

Respectfully report as follows: That Senate Bill No. 33
introduced bill, be amended as follows:

1. Page 1, lines 17 and 18.
Following: "Title-28"
Strike: "only when specifically provided for by statute"
Insert: "only in those cases specified by statute"
2. Page 2, line 15.
Following: "is"
Strike: "specifically permitted"
Insert: "specified"
3. Page 13, line 17 through 12 on page 14.
Strike: section 24 in its entirety
Renumber: all subsequent sections
4. Page 36, line 2.
Strike: "secretary of state and"

XXXXX
DO PASS

(Continued)

Chairman.

5. Page 36, line 5.
Strike: "secretary of state and the"
6. Page 36, line 12.
Strike: "64-210,"
7. Page 36, line 13.
Following: "93-6517"
Strike: ", "

And, as so amended,
DO PASS

G. A.

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 33	laws relating to remedies	1/19	VanValkenburg	Weds. 24th	concurr consent	1/24
SB 56	law relating to condemnation	1/19	VanValkenburg	Weds. 24th	concurr	1/24
SB 41	relating to the judiciary and courts	1/20	S. Brown	Weds 24th	concurr consent	1/24
SB 78	require service of process in actions - dept of admins.	1/22	VValkenburg	Thurs 25th	concurrred-amend	1/25
HB 308	license to marry not be issued if failed to support lawful dependents	1/22	Kemmis	Thurs. 25th	pass	1/25
HB 311	eliminate 1 hour wait for trial before the court may enter default	1/23	Ramirez	Fri. 26th	pass	1/26

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 24, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, January 24, 1979. All members were present with exception of Representative Carl Seifert.

Scheduled for hearing were House Bills No's 242, 270, and Senate Bills 33, 56, and 41.

SENATE BILL NO. 56: Senator Steve Brown explained the bill briefly and said that he would ask that Jim Beck go into it further.

JIM BECK: Chief Highway Attorney. The bill was formulated at our request. A committee hearing was mandatory in all condemnation cases. He said after going through the body of the bill that there are no evidentiary rulings. There is always a trial de nova unless both sides stipulate. He explained what he meant by this further after a question from one of the members.

There were no other proponents, no opponents and no further discussion and the hearing closed on Senate Bill No. 56.

SENATE BILL NO. 41: Senator Steve Brown said this is to clarify and revise the laws relating to courts. It also applies to district judges and the supreme court judges. It said it tried to put them on per diem expense like everybody else. The reduction was unconstitutional. He went on and explained further.

JOAN MAYER: Staff Attorney for Legislative Counsel. She said the bill changed judge to judicial officer. She went through the bill section by section and explained it. It was mostly for clarification of terminology.

There were no proponents and no opponents and no discussion and the hearing closed on Senate Bill No. 41.

SENATE BILL NO. 33: Senator Van Valkenburg asked that the committee excuse him and Joan Mayer would explain the bill, since it is a recode bill, an act to revise the laws relating to remedies. She went through the bill and explained the changes. There were no substantive changes, only updating of language and deleting some cross-references.

There was no discussion and the hearing closed on Senate Bill 33.

HOUSE BILL NO. 250:

unanimous.

Representative Keyser moved "do pass"
and the motion carried with the vote

HOUSE BILL NO. 270:

Representative Kemmis moved "do pass".
Representative moved to amend line 12
strike "may" and insert "shall". Representative Kemmis moved a
substitute motion strike "may be" and insert "is". The substitute
motion carried with the vote unanimous.

Representative Kemmis moved "do pass"
as amended" and the motion carried with
the vote unanimous. Representative Kemmis moved to place the bill
on the consent calendar. Representative Seifert voted "no". The
bill will not go to the consent calendar.

SENATE BILL NO. 33:

Representative Lory moved "be concurred
in" and the motion carried with the
vote unanimous. Representative Day moved to place the bill on the
consent calendar and the motion carried with the vote unanimous.

SENATE BILL NO. 41:

Representative Daily moved "be concurred
in" and the motion carried with the
vote unanimous. Representative Lory moved to place the bill on the
consent calendar. The motion carried with the vote unanimous and
the bill will go to the consent calendar.

SENATE BILL NO. 56:

Representative Keyser moved "be concurred
in" and the motion carried with the
vote unanimous. Representative Keedy moved to place the bill on the
consent calendar. Representative Keedy voted "no" and the bill will
not go to the consent calendar.

The meeting adjourned at 10:55 a.m.


John P. Scully, Chairman

SENATE BILL NO. 33

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO REMEDIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-107, MCA, is amended to read:

"27-1-107. Kinds of relief -- when given. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance, and specific and preventive relief may be given in no other cases than those specified in parts 2, 3, and 4 of this chapter, 27-1-102, 27-1-103, 28-1-104, and parts 16 and 17 of chapter 2 of title 28 ~~only when specifically provided for by statute~~ ONLY IN THOSE CASES SPECIFIED BY STATUTE."

Section 2. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, the slayer ~~he~~ must provide for the maintenance of the spouse ~~and minor children~~ of the person slain or permanently disabled ~~and for the minor children~~ in such manner and at such cost, either by

aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, to be ~~as is~~ determined by the court. ~~If any person slays or disables another person in a duel in this state, the slayer and he~~ is liable for and must pay all debts of the person slain or permanently disabled."

Section 3. Section 27-1-303, MCA, is amended to read:

"27-1-303. Limitation of damages for breach of obligation. ~~Notwithstanding the provisions of 27-1-204, 27-1-222, 27-1-223, and this part, no~~ No person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides ~~except in the cases specified in 27-1-221 through 27-1-223, 27-1-322, 70-16-100, 70-27-207, and 70-27-200 unless a greater recovery is specifically permitted~~ SPECIFIED by statute."

Section 4. Section 27-1-311, MCA, is amended to read:

"27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, except where ~~when~~ otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment ~~which was~~ proximately caused thereby or which in the ordinary course of things would be likely to result therefrom. ~~No damages can be recovered for a breach of contract~~ Damages which are not clearly ascertainable in

1 both their nature and origin ~~cannot be recovered for a~~
2 ~~breach of contract."~~

3 Section 5. Section 27-1-314, MCA, is amended to read:

4 "27-1-314. Breach of agreement to convey real
5 property. The detriment caused by the breach of an agreement
6 to convey an estate in real property is deemed ~~considered~~ to
7 be the price paid and the expenses properly incurred in
8 examining the title and preparing the necessary papers, with
9 interest thereon, ~~but adding thereto in case of~~ if the
10 ~~breach was in bad faith and the agreed price was less than~~
11 ~~the value of the estate, the detriment is also considered to~~
12 ~~include the difference between the agreed price agreed to be~~
13 ~~paid and the value of the estate agreed to be conveyed at~~
14 ~~the time of the breach and the expenses properly incurred in~~
15 ~~preparing to enter upon the land."~~

16 Section 6. Section 27-1-320, MCA, is amended to read:

17 "27-1-320. Conversion of personal property. (1) The
18 detriment caused by the wrongful conversion of personal
19 property is presumed to be:

20 (a) the value of the property at the time of its
21 conversion with the interest from that time or, where ~~when~~
22 the action has been prosecuted with reasonable diligence,
23 the highest market value of the property at any time between
24 the conversion and the verdict without interest, at the
25 option of the injured party; and

1 (b) a fair compensation for the time and money
2 properly expended in pursuit of the property.

3 (2) The presumption declared by subsection (1) cannot
4 be repelled in favor of one whose possession was wrongful
5 from the beginning by his subsequent application of the
6 property to the benefit of the owner without his ~~such~~
7 ~~owner's~~ consent."

8 Section 7. Section 27-1-501, MCA, is amended to read:

9 "27-1-501. Survival of cause of action or defense --
10 death or other disability or transfer of interest. An
11 action, cause of action, or defense ~~shall~~ does not abate by
12 ~~because of the~~ death or other disability of a party or by
13 the transfer of any interest therein, ~~but shall in all~~
14 ~~cases where a~~ whenever the cause of action or defense arose
15 in favor of such party prior to his death or other
16 disability or transfer of interest therein, survive it
17 survives and may be maintained by his representatives or
18 successors in interest, ~~and in case such~~ if the action has
19 not been begun or defense interposed, the action may be
20 begun or defense ~~set up~~ interposed in the name of his
21 representatives or successors in interest, ~~and in case~~ if
22 the action has been begun or defense ~~set up~~ interposed, the
23 ~~court shall on motion~~ allow the action or proceeding to
24 may be continued by ~~or against his representatives or~~
25 ~~successors in interest in case of any transfer of interest~~

1 the action or proceeding may be continued in the name of the
2 original party or the court may allow the person to whom the
3 transfer is made to be substituted in the action or
4 proceeding as provided in Rule 25, M.R.C.P."

5 Section 8. Section 27-1-606, MCA, is amended to read:

6 "27-1-606. Criminal penalty. Any person who shall
7 violate violates any of the provisions of this part shall be
8 guilty of a misdemeanor and is punishable upon conviction
9 therefor shall be punishable by a fine of not less than \$100
10 or more than \$1,000 or imprisonment for a term of not less
11 than 1 year or more than 5 years, in the discretion of the
12 court."

13 Section 9. Section 27-1-701, MCA, is amended to read:

14 "27-1-701. Liability for negligence as well as willful
15 acts. Every one Everyone is responsible not only for the
16 results results of his willful acts but also for an injury
17 occasioned to another by his want of ordinary care or skill
18 in the management of his property or person except so far as
19 the latter has willfully or by want of ordinary care brought
20 the injury upon himself. The extent of liability in such
21 cases is defined by parts 2 and 3 of this chapter,
22 subsections (1) through (3) of 69-11-121, 70-16-108,
23 70-27-207, and 70-27-208."

24 Section 10. Section 27-1-811, MCA, is amended to read:

25 "27-1-811. When owner of radio station not liable for

1 material broadcast. No person, firm, or corporation owning
2 or operating a radio broadcasting station shall be is liable
3 under the law of libel and defamation on account of having
4 made its broadcasting facilities available to any person,
5 whether including but not limited to a candidate for public
6 office or any other person, for discussion of controversial
7 or any other subjects in the absence of proof of actual
8 malice on the part of such owner or operator."

9 Section 11. Section 27-1-813, MCA, is amended to read:

10 "27-1-813. Liability of person broadcasting --
11 liability of owner for broadcast prepared by station.
12 Nothing in 27-1-811 or 27-1-812 contained shall may be
13 construed to relieve any person broadcasting over a radio
14 station from liability under the law of libel and
15 defamations. Nor shall anything in 27-1-811 or 27-1-812 be
16 construed or to relieve any person, firm, or corporation
17 owning or operating a radio broadcasting station from
18 liability under the law of libel and defamation on account
19 of any broadcast prepared or made by any such person, firm,
20 or corporation or by any officer or employee thereof in the
21 course of his employment, and in any case where liability
22 shall exist whenever such an owner or operator is liable on
23 account of any a broadcast as declared in the first clause
24 of this sentence in that event where and two or more
25 broadcasting stations were connected together simultaneously

or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of such ~~the~~ broadcast, such liability shall be confined and is limited solely to the person, firm, or corporation owning or operating the radio station which originated such ~~the~~ broadcast."

Section 12. Section 27-2-101, MCA, is amended to read:

"27-2-101. Definition of action. The word "action", as used in this chapter, ~~7-7-105(1), 7-32-4121, 17-5-1081, and 26-9-465,~~ is to be construed, whenever it is necessary to do so to do, as including a special proceeding of a civil nature."

Section 13. Section 27-2-102, MCA, is amended to read:

"27-2-102. When action commenced. ~~An~~ For the purposes of statutes relating to the time within which an action must be commenced, an action is commenced ~~within the meaning of [this chapter],~~ when the complaint is filed."

Section 14. Section 27-2-103, MCA, is amended to read:

"27-2-103. Actions by state subject to limitations. The limitations prescribed in ~~27-2-201 through 27-2-204, 27-2-207, 27-2-209 through 27-2-211(2), and 27-2-212 through 27-2-215~~ part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties."

Section 15. Section 27-2-105, MCA, is amended to read:

"27-2-105. Periods of limitation. The All civil actions must be commenced within the periods prescribed for the commencement of actions, other than for the recovery of real property, are as follows in part 2 except when another statute specifically provides a different limitation."

Section 16. Section 27-2-202, MCA, is amended to read:

"27-2-202. Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.

(2) The period prescribed for the commencement of an action upon a contract, account, or promise not founded on an instrument in writing is within 5 years.

(3) The period prescribed for the commencement of an action upon an obligation or liability, other than a contract, account, or promise, not founded upon an instrument in writing ~~other than a contract, account, or promise~~ is within 3 years."

Section 17. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions -- general and personal injury. (1) The period prescribed for the commencement of an action upon ~~an obligation or a liability~~ not founded upon an instrument in writing ~~other than a contract, account, or promise~~ is within 3 years.

(2) The period prescribed for the commencement of an

1 action to recover damages for the death of one caused by the
2 wrongful act or neglect of another is within 3 years.

3 (3) The period prescribed for the commencement of an
4 action for libel, slander, assault, battery, false
5 imprisonment, or seduction is within 2 years."

6 Section 18. Section 27-2-211, MCA, is amended to read:

7 "27-2-211. Actions to enforce penalty or forfeiture or
8 other statutory liability. (1) Within 2 years is the period
9 prescribed for the commencement of an action upon:

10 (a) a statute for a penalty or forfeiture when the
11 action is given to an individual or to an individual and the
12 state, except when the statute imposing it prescribes a
13 different limitation;

14 (b) a statute or an undertaking in a criminal action
15 for a forfeiture or penalty to the state;

16 (c) a liability created by statute other than a
17 penalty or forfeiture.

18 (2) The period prescribed for the commencement of an
19 action by a municipal corporation for the violation of any
20 city or town ordinance is within 1 year.

21 (3) ~~[Sections--93-2481--to--93-2728]--do--not--effect~~
22 Notwithstanding any other provision of this chapter, actions
23 against directors or stockholders of a corporation to
24 recover a penalty or forfeiture imposed or to enforce a
25 liability created by law, but such actions must be brought

1 within 3 years after the discovery by the aggrieved party of
2 the facts upon which the penalty of forfeiture attached or
3 the liability was created."

4 Section 19. Section 27-2-213, MCA, is amended to read:

5 "27-2-213. Actions against banks. ~~To (1) Except as~~
6 provided in subsection (2), there are no time limitations on
7 the commencement of actions brought to recover money or
8 other property deposited with any bank, banker, trust
9 company, or savings and loan corporation, association, or
10 society. ~~there are no limitations.~~

11 (2) However--any ANY action to obtain, set aside, or
12 question in any manner any stated or settled account between
13 any bank, banker, trust company, or savings or and loan
14 corporation, association, or society and any depositor ~~or~~
15 depositors with such bank, banker, trust company, or savings
16 or and loan corporation, association, or society must be
17 commenced within 5 years from the date of the statement of
18 such account. Any action based upon or arising from the
19 payment of by any bank, banker, trust company, or savings
20 and loan corporation, association, or society of a forged,
21 raised, or otherwise altered check, order, or promissory
22 note out of the deposit, money, or property of the plaintiff
23 ~~shall~~ must be brought commenced within 3 years from the day
24 on which the plaintiff, or his agent, assignee, or personal
25 representative ~~shall have been~~ was notified of such payment

1 or on--which--he--or--they--shall--have received such check,
2 order, or note marked "paid".

3 Section 20. Section 27-2-215, MCA, is amended to read:

4 "27-2-215. Other actions. An action for relief not
5 hereinbefore ~~otherwise~~ provided for must be commenced within
6 5 years after the cause of action shall--have-accrued
7 accrues."

8 Section 21. Section 27-2-303, MCA, is amended to read:

9 "27-2-303. Actions for waste, trespass, or injury
10 committed during mining work or exploration. When waste,
11 trespass, or injury is committed by reason of underground
12 work upon any mining claim or seismic exploration, location,
13 spacing, drilling, equipping, producing, or other operation
14 related to exploration or production of oil, gas, water,
15 geothermal ~~resources~~, or other minerals, the cause of action
16 shall ~~is not be deemed considered~~ to have accrued until the
17 discovery by the aggrieved party of the facts constituting
18 such waste, trespass, or injury."

19 Section 22. Section 27-2-304, MCA, is amended to read:

20 "27-2-304. Actions involving personal property
21 accruing after death and before issuance of letters of
22 administration. ~~For--the--purpose-of-computing-the~~ The time
23 within which an action must be commenced ~~in-a-court-of--this~~
24 state by an executor or administrator to recover personal
25 property taken after the death of a testator or intestate

1 and before the issuing of letters-testamentary-or letters of
2 administration or to recover damages for taking, detaining,
3 or injuring personal property within the same period--the
4 ~~letters--are-deemed-to-have-been-issued-within-5-years-after~~
5 ~~the-death-of-the-testator-or-intestator~~ shall be computed
6 from:

7 (1) the time of issuing such letters if they are
8 issued within 5 years of the death;

9 (2) 5 years after the death if the letters have not
10 then been issued."

11 Section 23. Section 27-2-401, MCA, is amended to read:

12 "27-2-401. When person entitled to bring action is
13 under a disability. (1) If a person entitled to bring an
14 action mentioned in part 2, except 27-2-211(3), be ~~is~~, at
15 the time the cause of action accrued ~~accrues~~, either within
16 ~~the--age-of-majority a minor, insane seriously mentally ill,~~
17 or imprisoned on a criminal charge or ~~in-execution~~ under the
18 a sentence of-a-criminal-court for a term less than f:
19 life, the time of such disability is not a part of the time
20 limited ~~in-[93-2401-to-93-2728]~~ for commencing the action
21 ~~except-that.~~ However the time so limited cannot be extended
22 more than 5 years by any such disability except ~~infancy~~
23 ~~minority~~ or, in any case, more than 1 year after the
24 disability ceases.

25 (2) Where ~~If~~ an action is barred by 27-2-304, any of

the next-of-kin ~~heirs~~, legatees ~~devisees~~, or creditors who at the time of the transaction upon which ~~the action~~ might have been founded, was ~~within--the--age--of--majority--insane--or--imprisoned--on--a--criminal--charge~~ under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of such disability, maintain an action to recover damages ~~by--reason--thereof~~ in which, In such action he may recover such sum or the value of such property as he would have received upon the final distribution of the estate if an action had been seasonably commenced by the executor or administrator.

(3) No person can ~~may~~ avail himself of a disability unless it existed when his right of action or entry accrued.

(4) When two or more disabilities coexist at the time the right of action or entry accrues, the limitation does not attach until they are both removed."

~~Section 24. Section 27-2-404, MCA, is amended to read:~~

~~"27-2-404. When a party dies before action--commenced,~~

~~{1}--if--a--person--entitled--to--bring--an--action--or--against--whom--an--action--may--be--brought--dies--before--the--expiration--of--the--time--limited--for--the--commencement--thereof--and--the--cause--of--action--survives--an--action--may--be--commenced--by--or--against--his--representatives--after--the--expiration--of--that--time--and--within--1--year--from--his--death--as--provided--in--the--Uniform--Probate--Code.~~

~~{2}--if--a--person--against--whom--an--action--may--be--brought--dies--before--the--expiration--of--the--time--limited--for--the--commencement--thereof--and--the--cause--of--action--survives--an--action--may--be--commenced--against--his--representatives--after--the--expiration--of--that--time--and--within--1--year--after--the--issuing--of--letters--testamentary--or--of--administration--if--a--person--against--whom--a--cause--of--action--exists--dies--without--the--state--the--time--which--elapses--between--his--death--and--the--expiration--of--1--year--after--the--issuing--within--the--state--of--letters--testamentary--or--letters--of--administration--is--not--a--part--of--the--time--limited--for--the--commencement--of--an--action--therefor--against--his--executor--or--administrators."~~

Section 24. Section 27-2-408, MCA, is amended to read:

"27-2-408. Effect on counterclaim of termination of action. Where Whenever a defendant in an action has interposed an answer in support of which he would be entitled to rely at the trial upon a defense or counterclaim then existing in his favor, the remedy upon which, at the time of the commencement of the action, was not barred by the provisions of [93-2401 to 93-2720] any provision of this code and the complaint is dismissed or the action is discontinued or abates in consequence because of the plaintiff's death, the time which intervened between the commencement and the termination of the action is not a part of the time limited for the commencement of an action by the

1 defendant to recover for the cause of action so interposed
2 as a defense or to interpose the same defense in another
3 action brought by the same plaintiff or a person deriving
4 title from or under him."

5 Section 25. Section 27-2-409, MCA, is amended to read:

6 "27-2-409. Acknowledgment of debt or part payment. No
7 acknowledgment or promise is sufficient evidence of a new or
8 continuing contract by which to take the case out of the
9 operation of ~~[(93-2401) to (93-2720)]~~ sufficient to cause the
10 relevant statute of limitations to begin running anew unless
11 the same is contained in some writing signed by the party to
12 be charged thereby. But ~~however~~, this section does not alter
13 the effect of any payment of principal or interest, which
14 payment is equivalent to a new promise in writing, duly
15 signed, to pay the residue of the debt."

16 Section 26. Section 27-5-303, MCA, is amended to read:

17 "27-5-303. When award has effect of a judgment. After
18 the expiration of 5 days from the filing of the award, upon
19 the application of a party ~~and on filing who also files~~ an
20 affidavit showing that notice of filing the award has been
21 served on the adverse party or his attorney at least 4 days
22 prior to such application and that no order staying the
23 entry of judgment has been served, ~~the clerk must enter~~ the
24 award ~~must be entered by the clerk~~ in the judgment book and
25 thereupon ~~it~~ has the effect of a judgment."

1 Section 27. Section 27-6-402, MCA, is amended to read:

2 "27-6-402. Selection of panelists. (1) Application for
3 review shall be promptly transmitted by the director to the
4 directors of the health care provider's state professional
5 society or association and the state bar, which shall each
6 select three panelists within 30 days from the date of
7 transmittal of the application.

8 (2) If no state professional society or association
9 exists or if the health care provider does not belong to
10 such a society or association, the director shall transmit
11 the application to the health care provider's state
12 licensing board, which shall in turn select three persons
13 from the health care provider's profession, and, where
14 applicable, to ~~from~~ persons specializing in the same field
15 or discipline as the health care provider."

16 Section 28. Section 27-6-503, MCA, is amended to read:

17 "27-6-503. Conclusion of hearing -- supplemental
18 hearing. (1) At the conclusion of the hearing, the panel may,
19 take the case under advisement or may request that
20 additional facts, records, witnesses, or other information
21 be obtained and presented to it at a supplemental hearing,
22 which shall be set for a date and time certain, not longer
23 than 30 days from the date of the original hearing unless
24 the ~~attorney bringing the matter for review~~ claimant or his
25 attorney consents in writing to a longer period.

(2) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present."

Section 29. Section 27-6-605, MCA, is amended to read:
 "27-6-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel. ~~The A copy of the report decision~~ shall be sent to the health care provider's professional licensing board."

Section 30. Section 27-6-704, MCA, is amended to read:
 "27-6-704. Panel proceedings and report decision privileged from disclosure in court actions. (1) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) No statement made by any person during a hearing before the panel may be used as impeaching evidence in court. The report decision of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law."

Section 31. Section 27-7-103, MCA, is amended to read:
 "27-7-103. Entry of judgment -- costs. Judgment must be entered in the judgment book as in other cases but

without costs for any proceeding prior to the trial. ~~The case--the submission--and a copy of the judgment constitute the judgment roll.~~"

Section 32. Section 27-8-204, MCA, is amended to read:
 "27-8-204. Declarations concerning administration of trusts and estates. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, ~~legatee~~ heir, next-of-kin or cestui que trust in the administration of a trust or of the estate of a decedent, ~~infant minor, lunatic~~ seriously mentally ill person, or insolvent may have a declaration of rights or legal relations in respect thereto:

(1) to ascertain any class of creditors, devisees, ~~legatees~~ heirs, next-of-kin, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings."

Section 33. Section 27-9-101, MCA, is amended to read:
 "27-9-101. When and in what courts judgment may be confessed. ~~A Subject to 28-2-707, a~~ judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent

1 liability on behalf of the defendant, or both, in the manner
2 prescribed by this chapter. Such judgment may be entered in
3 any court having jurisdiction for like amounts. Judgment
4 upon confession may be entered up in any justice's court
5 specified in the confession, as provided in this chapter."

6 Section 34. Section 27-9-103, MCA, is amended to read:

7 "27-9-103. Filing and costs -- district court. The
8 statement must be filed with the clerk of the court in which
9 the judgment is to be entered, who ~~must~~ shall endorse upon
10 it and enter in the judgment book a judgment of such court
11 for the amount confessed, with \$10 costs. ~~The statement--and~~
12 ~~affidavit--with--the judgment--endorsed--thereon--becomes--the~~
13 ~~judgment--roll--~~"

14 Section 35. Section 27-9-104, MCA, is amended to read:

15 "27-9-104. Filing and costs -- justice's court. In a
16 justice's court where the court which has authority to enter
17 the judgment, the statement may be filed with the justice,
18 who may shall thereupon enter in his docket a judgment of
19 his court for the amount confessed, with \$5 costs ~~in the~~
20 ~~district--court--and--\$3--in--the--justice's--court.~~ If a
21 transcript of such judgment be ~~is~~ filed with the clerk of
22 ~~the district court,~~ a copy of the statement must be filed
23 with it."

24 Section 36. Section 27-15-102, MCA, is amended to
25 read:

1 "27-15-102. Availability of provisional remedies to
2 defendant interposing counterclaim. Where ~~Whenever~~ the
3 defendant interposes a counterclaim and thereupon demands an
4 affirmative judgment against the plaintiff, his right to a
5 provisional remedy is the same as ~~it would be~~ in an action
6 brought by him against the plaintiff for the cause of action
7 stated in the counterclaim and demanding the same judgment,
8 and for ~~for~~ the purpose of applying to such a case the
9 provisions of chapters 15 through 20 ~~except part 18 of~~
10 ~~chapter 16, 27-17-182, 27-17-481, 27-18-111, and part 15 of~~
11 ~~chapter 18,~~ of this title and chapter 8 of Title 25, chapter
12 8, the defendant is deemed considered the plaintiff, the
13 plaintiff is deemed considered the defendant, and the
14 counterclaim so set forth in the answer is deemed considered
15 the complaint."

16 Section 37. Section 27-16-101, MCA, is amended to
17 read:

18 "27-16-101. Exclusive procedure for prejudgment arrest
19 in civil action. No person shall ~~may~~ be arrested before
20 judgment in a civil action except as prescribed by this
21 chapter."

22 Section 38. Section 27-16-102, MCA, is amended to
23 read:

24 "27-16-102. When defendant may be arrested. The
25 defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud his creditors;

(2) when--the in an action ~~is~~ for willful injury to person~~y~~--to or character, or to property~~y~~--~~knowing--the~~ property--~~to--belong~~ which the defendant knew belonged to another;

(3) in an action for a fine or penalty or for money or property fraudulently misapplied or converted to his own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or in a professional employment; or for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt~~y~~--~~in~~ or incurring the obligation for which the action is brought, or in concealing or disposing of the property or for ~~the~~ taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors."

Section 39. Section 27-18-102, MCA, is amended to read:

"27-18-102. What property subject to attachment. (1) ~~The~~ Except as provided in subsection (2), the rights or shares which the defendant ~~may have~~ has in the stock of any corporation or company, together with the interest and profits thereon, all debts due ~~such~~ the defendant, and all other property in this state of ~~such~~ the defendant not exempt from execution may be attached and, if judgment ~~be~~ is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

(2) In any action where in which the amount sued for is \$10 or less, ~~no writ of attachment shall be issued and levied upon or against~~ the wages or ~~and~~ earnings of the debtor or defendant for his personal services rendered at any time within 30 days ~~next--preceding~~ before the commencement of the action~~y~~--~~and in any such case--or--action~~ such wages and earnings are exempt from attachment."

Section 40. Section 27-18-301, MCA, is amended to read:

"27-18-301. Form and content of writ -- defendant's undertaking to prevent levy. (1) The writ must be directed

1 to the sheriff of any county in which property of such
2 defendant may be and must require him to:

3 (a) attach and safely keep all the property of such
4 defendant within his county, not exempt from execution
5 ~~attachment~~, or so much thereof as may be sufficient to
6 satisfy the plaintiff's demand, the amount of which must be
7 stated in conformity with the complaint; or

8 (b) ~~unless if~~ the defendant give ~~gives~~ him security by
9 the undertaking of at least two sufficient sureties, in an
10 amount sufficient to satisfy such demand, besides costs, or
11 in an amount equal to the value of the property which has
12 been or is about to be attached, ~~in which case to~~ take such
13 undertaking.

14 (2) Such ~~the~~ undertaking ~~is to~~ must be to the
15 plaintiff ~~or plaintiffs~~ in the action and shall must be
16 approved in writing on the back thereof by the plaintiff ~~or~~
17 ~~plaintiffs~~ or his ~~or their~~ attorney ~~or attorneys~~ or, upon
18 their refusal, by the judge of the district court of the
19 same county as the residence of the sheriff."

20 Section 41. Section 27-18-304, MCA, is amended to
21 read:

22 "27-18-304. When sheriff may require written
23 specification of property to be levied upon. No written
24 specification of property to be levied upon ~~must~~ may be
25 required by the sheriff, except as to property referred to

1 in 27-18-403 and 27-18-405(2)."

2 Section 42. Section 27-18-410, MCA, is amended to
3 read:

4 "27-18-410. Corporate stock -- service on secretary of
5 state. In addition to the method prescribed in 27-18-409 for
6 attaching ~~stocks~~ stock or shares or interest therein of any
7 corporation or company, if the president or other head of
8 the same or the secretary, cashier, or other managing agent
9 thereof does not live or cannot be found in Montana or
10 ~~cannot be found within the said state~~ and an affidavit is
11 filed in the office of the clerk of the court in which the
12 action is pending setting forth that the---above-named
13 ~~officers---or---managing~~ such officer or agent ~~of--said~~
14 ~~corporation~~ does not live or cannot be found within--the
15 state in Montana, the clerk of the court shall make an order
16 directing the writ to be served upon the secretary of state
17 of Montana or, in his absence from his office, upon the
18 deputy secretary of state. When such order has been made,
19 the writ of attachment shall be served upon the secretary of
20 state ~~or in his absence upon the~~ deputy secretary of state
21 by leaving with him a copy of ~~said the~~ writ and a notice
22 that the stock or shares or interest therein of such
23 corporation or company belonging to the defendant is
24 attached in pursuance of such ~~the~~ writ."

25 Section 43. Section 27-18-413, MCA, is amended to

1 read:

2 "27-18-413. Personal property subject to a security
3 interest. Personal property subject to a security interest
4 may be taken on attachment issued at the suit of a creditor
5 ~~(other than the secured party)~~ of the debtor under the
6 security agreement; but before the property is so taken, the
7 officer levying the writ must pay or tender to the secured
8 party the amount of the security agreement debt and interest
9 or must deposit the same with the county treasurer of the
10 county in which the financing statement covering the
11 security agreement is filed; if such statement is filed with
12 a county clerk and recorder, or, if such statement is filed
13 with another filing officer pursuant to law, then with such
14 other filing officer, payable to the order of the secured
15 party."

16 Section 44. Section 27-18-1504, MCA, is amended to
17 read:

18 "27-18-1504. Form and content of Writ -- defendant's
19 undertaking to prevent levy. (1) The writ may be directed to
20 the sheriff or any constable of the county or the sheriff of
21 any other county and must require him to:

22 (a) attach and safely keep all the property of the
23 defendant in his county, not exempt from execution
24 attachment, or so much thereof as may be sufficient to
25 satisfy the plaintiff's demand, the amount of which must be

1 stated in conformity with the complaint; or

2 (b) unless if the defendant has--given gives him
3 security by the undertaking of two sufficient sureties in an
4 amount sufficient to satisfy such demand, besides costs, in
5 which case to take such undertaking.

6 (2) Such the undertaking is--to must be to the
7 plaintiff or--plaintiffs--in--the--action and shall must be
8 approved in writing on the back thereof by the plaintiff or
9 plaintiffs or his or their attorney or attorneys or, upon
10 their refusal, by the justice issuing such the writ."

11 Section 45. Section 27-18-1506, MCA, is amended to
12 read:

13 "27-18-1506. Applicability of procedure in district
14 court. Part 1v--except--27-18-101; 27-18-207, 27-18-303,
15 27-18-304v--27-18-306 through 27-18-308; parts 4, 5, and 6v
16 except-27-18-406; 27-18-711 through 27-18-713, 27-18-721
17 through 27-18-732; and parts 8 and 9, except 27-18-901, are
18 applicable to attachments issued in justices' courts, the
19 word "constable" being substituted for the word "sheriff"
20 whenever the writ is directed to a constable, and the word
21 "justice" substituted for "judge".

22 Section 46. Section 27-19-204, MCA, is amended to
23 read:

24 "27-19-204. Issuance without bond. Said the injunction
25 provided for in 27-19-202 shall issue as in cases of equity,

without bond, upon the application of the county attorney of the county in which such ~~the~~ action is pending or upon the application of the attorney general in the name of the state of Montana, upon a prima facie showing that an action--civil or--criminal described in 27-19-202 has been so instituted and is so pending--charging--such--person--or--persons--corporation--or--corporations--foreign--or--domestic--with--such violation."

Section 47. Section 27-19-303, MCA, is amended to read:

"27-19-303. Time of granting injunction, evidence required. The injunction order may be granted at the time of issuing the summons upon the complaint or at any time afterward before judgment upon affidavits. In the one case, the complaint, with or without affidavits to support it, and, in the other, the affidavits shall ~~must~~ show satisfactorily that sufficient grounds exist therefor ~~for the order~~. An injunction order shall ~~may~~ not be granted on the complaint alone unless:

(1) it be ~~is~~ duly verified; and

(2) the material allegations of the complaint setting forth the grounds therefor--be for the order are made positively and not upon information and belief."

Section 48. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) ~~On-granting-an injunction-or-restraining-order--the--court--or--judge--may require--except~~ Except when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a party plaintiff, on granting an injunction or restraining order, the court or judge may require a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction if the court finally ~~decide~~ decides that the plaintiff was not entitled thereto.

(2) Within 5 days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If the ~~plaintiff~~ he fails to do so, such ~~plaintiff-is-deemed to-have-waived~~ he waives all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, ~~and-upon-failure~~ if they fail to justify or if others in their place fail to justify at the time and place appointed, the order granting ~~an~~ the injunction shall ~~must~~ be dissolved."

Section 49. Section 27-19-402, MCA, is amended to

1 read:

2 "27-19-402. Evidence upon ~~at~~ hearing. Upon ~~At~~ the
3 hearing ~~on the application~~ to vacate ~~dissolve~~ or modify an
4 injunction order, a verified answer has the effect only of
5 an affidavit. If the application ~~be is~~ made upon affidavits
6 on ~~the~~ part of ~~the~~ defendant, but not otherwise, the
7 plaintiff may oppose the same by oral testimony or
8 affidavits ~~or oral testimony~~ in addition to those on which
9 the injunction order was granted. The defendant may also use
10 oral testimony."

11 Section 50. Section 27-19-403, MCA, is amended to
12 read:

13 "27-19-403. New undertaking for security following
14 hearing. Upon the hearing ~~of an application to vacate or~~
15 ~~modify an injunction order~~, the court or judge may require a
16 new undertaking, in the same or a different sum, to be given
17 by the plaintiff, with like sureties and to the like effect
18 as the undertaking executed upon ~~the~~ granting of the
19 original order. The persons executing the new undertaking
20 become liable thereon as if they had executed it upon the
21 granting of the original order. The persons who executed
22 the original undertaking remain liable thereon until the new
23 undertaking is given and approved, and no longer."

24 Section 51. Section 27-19-404, MCA, is amended to
25 read:

1 "27-19-404. When injunction dissolved or modified. If
2 upon such ~~application~~ the hearing it satisfactorily appear
3 ~~appears~~ that there ~~is are~~ not sufficient ground grounds for
4 the injunction order, ~~it shall~~ the order must be dissolved;
5 or if it satisfactorily appear ~~appears~~ that the extent of
6 the injunction order is too great, ~~it shall~~ the order must
7 be modified. ~~The court or judge may vacate the injunction~~
8 ~~order where the alleged wrong or injury is not irreparable~~
9 ~~and is capable of being adequately compensated for in~~
10 ~~money."~~

11 Section 52. Section 27-19-405, MCA, is amended to
12 read:

13 "27-19-405. Defendant's undertaking for security upon
14 dissolution. Upon the hearing mentioned in 27-19-403 if the
15 injunction order is dissolved because the alleged injury is
16 not irreparable and is capable of being adequately
17 compensated for in money, the court or judge ~~may vacate the~~
18 ~~injunction order upon the defendant's executing~~ shall
19 require the defendant to execute an undertaking in such form
20 and amount and with such sureties as the court or judge
21 ~~shall~~ pay direct, conditioned to indemnify the plaintiff
22 against loss sustained by reason of ~~vacating such injunction~~
23 order the dissolution."

24 Section 53. Section 27-20-301, MCA, is amended to
25 read:

1 "27-20-301. Oath and undertaking to faithfully
2 discharge duties. Before entering upon his duties, the
3 receiver must be sworn to perform them faithfully and shall
4 ~~execute an undertaking~~, with one or more sureties approved
5 by the court or judge, ~~execute-on-undertaking~~ to such person
6 and in such sum as the court or judge may direct, to the
7 effect that he will faithfully discharge the duties of
8 receiver in the action and obey the orders of the court
9 therein. The court may at any time direct him to give new
10 bonds with new sureties with the like effect. Such
11 ~~undertaking-may-be-sued-on-as-provided-in-2-9-505."~~

12 Section 54. Section 27-25-103, MCA, is amended to
13 read:

14 "27-25-103. Application of rules of procedure. Except
15 as otherwise provided in this chapter, the provisions of
16 ~~[93-2301--to--93-0717]~~ Title 25 are applicable to and
17 constitute the rules of practice in the proceedings
18 mentioned in this chapter. The provisions of ~~[93-2301--to~~
19 ~~93-0717]~~ Title 25 relative to new trials and appeals, except
20 insofar as they are inconsistent with the provisions of this
21 chapter, apply to the proceedings mentioned in ~~said this~~
22 chapter."

23 Section 55. Section 27-26-103, MCA, is amended to
24 read:

25 "27-26-103. Application of rules of procedure. Except

1 as otherwise provided in this chapter, the provisions of
2 ~~[93-2301--to--93-0717]~~ Title 25 are applicable to and
3 constitute the rules of practice in the proceedings
4 mentioned in this chapter. The provisions of ~~[93-2301--to~~
5 ~~93-0717]~~ Title 25 relative to new trials and appeals, except
6 insofar as they are inconsistent with the provisions of this
7 chapter, apply to the proceedings mentioned in ~~said this~~
8 chapter."

9 Section 56. Section 27-26-303, MCA, is amended to
10 read:

11 "27-26-303. Jury trial. (1) If an answer be ~~is~~ made
12 which raises a question as to a matter of fact essential to
13 the determination of the motion and affecting the
14 substantial rights of the parties, and upon the supposed
15 truth of the allegation of which the application for the
16 writ is based, the court or judge may, in its or his
17 discretion, order the question to be tried before a jury and
18 postpone the argument until ~~such the~~ trial can be had. Tr.
19 question to be tried must be distinctly stated in the order
20 for trial. The order may also direct the jury to assess any
21 damages which the applicant may have sustained, ~~in case they~~
22 ~~find if it finds~~ for him.

23 (2) If the proceeding is in the district court or
24 before a district judge, the trial must take place as in
25 other cases. If a jury be ~~is~~ required in the supreme court,

1 a jury must be drawn and selected from the jury boxes ~~box~~ of
 2 ~~the--county-in-which-the-seat-of-government-is-located~~ Lewis
 3 ~~and Clark County~~ and the clerk of the district court of said
 4 ~~that~~ county must ~~shall~~ place such--boxes ~~the box~~ in the
 5 custody of the clerk of the supreme court for that purpose.
 6 The conduct of the trial ~~shall~~ must be the same as in the
 7 district court, and the clerk of the supreme court ~~shall~~
 8 have ~~has~~ the same authority to issue process, and enter
 9 orders and judgments as the district ~~court~~ clerk has in like
 10 cases."

11 Section 57. Section 27-26-402, MCA, is amended to
 12 read:

13 "27-26-402. Judgment for applicant. If judgment be ~~is~~
 14 given for the applicant:

15 (1) he may recover the damages which he has sustained,
 16 as found by the jury or as ~~may-be~~ determined by the court or
 17 referees, upon ~~if~~ a reference to-be ~~was~~ ordered, together
 18 with costs;

19 (2) ~~an execution may issue~~ for such damages and costs,
 20 ~~an-execution-may-issue~~; and

21 (3) a peremptory mandate must be awarded without
 22 delay."

23 Section 58. Section 27-28-207, MCA, is amended to
 24 read:

25 "27-28-207. Procedure when action brought in supreme

1 court. Actions under this chapter commenced in the supreme
 2 court ~~shall~~ must be conducted in the same manner as if
 3 commenced in the district court, and the clerk of the
 4 supreme court ~~shall-have~~ has the same authority to issue
 5 summons and other process and to enter orders and judgments
 6 as the clerk of the district court has in like cases. All
 7 pleadings and the conduct of the trial ~~shall~~ must be the
 8 same as in the district court. If a jury is required to
 9 determine an issue of fact, a jury ~~shall~~ must be drawn and
 10 selected from the jury boxes ~~box~~ of ~~the-county-in-which--the~~
 11 ~~seat-of-government-is-located~~ Lewis and Clark County and the
 12 clerk of the district court of ~~said that~~ county must ~~shall~~
 13 place such ~~the~~ jury boxes ~~box~~ in the custody of the clerk of
 14 the supreme court for that purpose."

15 Section 59. Section 27-28-505, MCA, is amended to
 16 read:

17 "27-28-505. Powers and duties of trustees --
 18 liability. (1) The trustees shall forthwith immediately
 19 demand all money, property, ~~books--deeds--notes--bills--~~
 20 ~~obligations~~, and papers of--every--description within the
 21 custody,---power, or control of the officers of the
 22 corporation,---or-either-of-them belonging to the corporation
 23 or in ~~anywise~~ any way necessary for the settlement of its
 24 affairs or for the discharge of its debts and liabilities;
 25 and they may sue for and recover the demands and property of

1 the corporation.

2 ~~(2)~~ ~~and---shall---be~~ The trustees are jointly and
3 severally liable to the creditors and stockholders of the
4 corporation to the extent of its property and effects which
5 come into their hands."

6 Section 60. Section 27-31-102, MCA, is amended to
7 read:

8 "27-31-102. Petition for change of name of nonprofit
9 corporation. Any religious, benevolent, literary, ~~or~~
10 scientific corporation or any corporation bearing or having
11 ~~for its name~~ or using or being known by the name of any
12 benevolent or charitable order or society may, by petition,
13 apply to the district court of the county in which its
14 articles of incorporation were originally filed or in which
15 the its property of--such--corporation is situated for a
16 change of its corporate name. Such petition must be signed
17 by a majority of the directors or trustees of the
18 corporation and must specify the date of the formation of
19 the corporation, the name proposed, and the reason for such
20 ~~the~~ change of name. Upon ~~the~~ filing ~~such of the~~ petition on
21 ~~behalf--of--such--corporation~~, the same proceedings procedure
22 shall be made followed as upon applications for changes of
23 names of natural persons."

24 Section 61. Section 27-31-205, MCA, is amended to
25 read:

1 "27-31-205. Annual report of name changes by clerk to
2 ~~secretary--of--state and legislative council~~ -- publication.
3 Each ~~January the~~ clerk of the district court shall, ~~annually~~
4 ~~in the month of January, make a return report~~ to the office
5 of ~~secretary--of--state of and the legislative council~~ all
6 changes of names made during the preceding year in the
7 district court of his county under this chapter. Such return
8 shall ~~The report must~~ show the date of the judgment of the
9 court, original name, name decreed, and residence. Such
10 returns--shall The reports must be published in a tabular
11 form with the statutes first published thereafter."

12 Section 62. Repealer. Sections 64-210, 93-6501 through
13 93-6517, and 93-9011, R.C.M. 1947, are repealed. Sections
14 27-1-814 through 27-1-817, MCA, are repealed.

-End-